UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SUBREGION 37

and TBR PROPERTY, LLC, a SINGLE EMPLOYER, d/b/a TURTLE BAY RESORTS, and BENCHMARK HOSPITALITY, INC. Cases 37-CA-6601-1 37-CA-6642-1 37-CA-6669-1 37-CA-6691-1 and 37-CA-6730-1 37-CA-6753-1 37-CA-6756-1 UNITE HERE! LOCAL 5 37-CA-6768-1 37-CA-6816-1 37-CA-6826-1 37-CA-6827-1 37-CA-6835-1 37-CA-6840-1 37-CA-6875-1 37-CA-6877-1

OAKTREE CAPITAL MANAGEMENT, LLC,

MOTION TO STRIKE RESPONDENTS' EXCEPTIONS AND BRIEF IN SUPPORT OF <u>EXCEPTIONS TO ALJ DECISION</u>

37-CA-6878-1

Pursuant to Section 102.46 of the Board's Rules and Regulations, and for the reasons set forth below, Counsel for the General Counsel moves to strike certain of Respondents' exceptions and Respondent's Brief in Support of Exceptions to ALJ Decision.

I. <u>Background</u>

A. Respondents' Brief in Support of Exceptions Contains About 21 Pages of Single-Spaced Text and in Effect Exceeds the Allotted Page Limit

On about August 22, 2006, Respondents filed with the Board a Motion for Permission to Exceed Increased Page Limit for Brief in Support of Exceptions to Decision of Administrative

Law Judge. Respondents requested a 250 page limit for its Brief in Support of Exceptions. On August 29, 2006, Associate Executive Secretary Richard Hardick granted in part Respondents' request, stating that Respondents' "[b]rief is not to exceed **175 pages**."

On about September 10, 2006, Respondents filed their Brief in Support of Exceptions ("Respondents' Brief") to ALJ Decision. The signature page of Respondents' Brief is on page 173. The following pages of Respondents' Brief contain significant amounts of single-spaced text: pages 50, 57, 58-59, 60-62, 85-86, 88, 111-118, 131-132, and 136. Respondents' Brief also contains extensive single-spaced footnote written in a font smaller than in the text of Respondents' Brief itself. (*See, e.g.*, page 51 and page 64).

B. Respondents' Exceptions Do Not Conform With the Requirements of Section 102.46(b) of the Board's Rules and Regulations

The following of Respondents' Exceptions are improper in that they do not specifically set forth the questions of procedure, fact, law or policy to which exception is taken and/or they contain argument: 1-2, 8-17, 25, 27, 29-34, 38-41, 43-46, 57, 59-67, 69-88, 93-95, 97-110, 116-122, 125-127, 134-135, 137-153, 161-174, 177, 179, 183, 186-187, 194-201, 203, 205-213, 216-231, 233-242, 245-274, 278, 280-294, 296-298, 300-306, 310, 312-326, 330, 332-334, 336-338, and 341-43.

The following of Respondents' Exceptions are improper in that they do not designate by precise citation of page the portions of the record relied on and/or do not precisely identify the part of the administrative law judge's decision to which objection is made: 1-9, 40-42, 52-58, 60-118, 120-230, and 232-349. Indeed, the following of Respondents' Exceptions include as part of the "ALJD Citation" the term "passim," which literally means "everywhere": 1, 38, 39,

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Exceptions 212 and 213 are identical to 210 and 211.

41, 57-58, 61-64, 67-69, 76-77, 80-81, 85, 87, 96, 100, 108-112, 128-130, 132-133, 149-150, 153-155, 204-207, 221, 223-225, 246, 267-270, 276-277, 281-282, 296, 298, 321, and 323-324.

II. Argument

A. Respondents Brief Does Not Conform with Section 102.46(j) of the Board's Rules and Regulations

Section 102.46(j) of the Board's Rules and Regulations states in pertinent part that Exceptions "shall be double spaced" Respondents' Brief contains approximately 21 pages of single-spaced text. Thus, Respondents' Brief does not conform with Section 102.46(j) of the Board's Rules and Regulations. Respondents requested, and were denied, a 250 page limit for their Brief in Support of Exceptions. The Board granted Respondents' a 175 page limit and the brief they submitted contained 173 pages, excluding attachments. In consideration of the large number of single-spaced pages included in Respondents' brief, Respondents in effect exceeded the allotted page limit.

Because Respondents' Brief does not conform with the Board's Rules and Regulations,
Counsel for the General Counsel respectfully requests that the Board grant the instant Motion to
Strike Respondents' Brief.

B. Nearly All of Respondents' Exceptions Fail to Conform with the Minimum Requirements of Section 102.46(b) of the Board's Rules and Regulations

Section 102.46(b) of the Board's Rules and Regulations sets forth the minimum requirements with which exceptions to an administrative law judge's decision must comply in order to merit consideration by the Board. That section states:

(b)(1) Each exception (i) shall set forth specifically the questions of procedure, facts, law, or policy to which exception is taken; (ii) shall identify the part of the administrative law judge's decision to which objection is made; (iii) shall designate by precise citation of page the portions of the record relied on; and (iv) shall concisely state the grounds for the exception. If a supporting brief is filed

the exceptions document **shall not contain any argument** or citation of authority in support of the exceptions, but such matters shall be set forth only in the brief.

(Emphasis added). Thus, "[a] party excepting to the findings of an administrative law judge must set forth with specificity those portions of the judge's decision to which it excepts, and support the contentions with legal or record citations or appropriate argument." *Rocket Industries, Inc.*, 304 NLRB 1017 (1991) (citing *Bonanza Sirloin Pit*, 275 NLRB 310 (1985)).

Also, because Respondents' have filed a Brief in Support of Exceptions, Respondents'

Exceptions should not contain any argument, defined by the Board as "the reasons or facts that assertedly establish the exception." *See KSL DC Management*, 344 NLRB No. 35 (2005).

In this case, very few of Respondents' Exceptions comport with the requirements of Section 102.46(b). Indeed, it appears that Respondents wrote their Brief in Support of Exceptions and then cut and pasted lines from the Brief to compose their exceptions.²

As set forth above, a number of Respondents Exceptions contain argument. Other exceptions are improper in that they fail to specifically set forth the questions of procedure, fact, law, or policy to which exception is taken or to designate by precise citation of pages the portions of the record relied on.

In light of Respondents' failure to comply with the requirements set forth in Section 102.46.(b), Counsel for General Counsel respectfully requests that the Board grant the instant Motion to Strike Respondents' Exceptions.

This is quite evident in Respondents' Exception 249 which states ". . . The Union was materially impacted by and/or prevented from collecting dues, which is discussed in more detail in the 'procedural Section' and the 'Analysis/Dues Section' of this Brief."

III. Conclusion

WHEREFORE, in consideration of the above, Counsel for General Counsel respectfully requests that the Board grant the instant motion to strike Respondents' Exceptions and Brief in Support of Exceptions to ALJ Decision.

Dated at Honolulu, Hawaii, this 8th day of December, 2006.

Respectfully submitted,

Meredith A. Burns Counsel for the General Counsel National Labor Relations Board, Region 20, SubRegion 37 300 Ala Moana Blvd. 7-245 Honolulu, Hawaii 96850

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of Motion to Strike Respondents' Exceptions and Brief in Support of Exceptions to ALJ Decision, has this day been served as described below upon the following persons at their last-known address:

1 copy Daniel T. Berkley, Esq. Via Federal Express

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DATED at Honolulu, Hawaii, this 8th day of December, 2006.

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